



Eric McDonough <phd2b05@gmail.com>

PRR James Eric McDonough - City Clerk Responsive Email (9-23-2019)

Eric McDonough <phd2b05@gmail.com>

Tue, Sep 24, 2019 at 7:59 PM

To: Liz Palau <LPalau@cityofhomestead.com>, Elizabeth Sewell <ESewell@cityofhomestead.com>, Stephen Shelley <sshelley@cityofhomestead.com>, Elvis Maldonado <Emaldonado@cityofhomestead.com>, Jenifer Bailey <JBAILEY@cityofhomestead.com>, Julissa Chavez <JChavez@cityofhomestead.com>, Jon Burgess <Jburgess@cityofhomestead.com>, Larry Roth <Lroth@cityofhomestead.com>, Patricia Fairclough <Pfairclough@cityofhomestead.com>, jguzman@cityofhomestead.com, George Gretsas <ggretsas@cityofhomestead.com>, arolle@homesteadpolice.com

Hello,

At this point the City is absolutely refusing me access to inspect, period.

Please stop treating me like I do not know the public records law.

As to your comments, please consider the text and phone records as two separate requests, separate from the email records, for which immediate inspection is demanded.

I am demanding to be allowed to personally inspect any emails between SDNL and HPD. If several inspection times are necessary we can deal with that then. However, I need immediate access to inspect. You are required to allow inspection at any reasonable time, not when your ready to let me inspect.

These records are critical and time sensitive. Stop playing games to improperly manipulate the election, and cover for the repeated retaliation against me by HPD. Any further delay and you may be subjecting yourself to criminal penalties and possible removal from office. I am assuming you need to keep your job, so I would ask that you comply with the law.

I would like to stand over the shoulder of the IT guy pulling the records with my camera. I do not need to be in control. I am not dictating the manner in which inspection must take place, but I am demanding the right to inspect these records electronically, period. There are many possible ways this may be accomplished, which you may choose from, if you don't like my idea. However, refusal to allow me to inspect is a crime.

I want to see the email titles, then will decide which emails I wish to view or have sent to me.

There should be nothing privileged between the SDNL and HPD in email.

Please let me know the earliest time which I can come and personally inspect these electronic records electronically. I think it will take less than an hour, and as the first 30 minutes is waived, let me know my cost for 30 minutes of time to have IT sit with me to inspect these records. I will bring money with me when I come to inspect.

I provide the following so you and the attorneys will hopefully stop playing stupid.

119.01 General state policy on public records.—

(1) It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.

(2)(a) **Automation of public records must not erode the right of access to those records.** As each agency increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law.

119.07 Inspection and copying of records; photographing public records; fees; exemptions.—

(1)(a) **Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time,** under reasonable conditions, and under supervision by the custodian of the public records.

(f) If requested by the person seeking to inspect or copy the record, the custodian of public records shall state in writing and with particularity the reasons for the conclusion that the record is exempt or confidential.

From the Government in the Sunshine Manual:

d. Arbitrary time for inspection

The Public Records Act authorizes inspection and copying of public records "at any reasonable time." Section 119.07(1) (a), F.S. While the custodian may reasonably restrict inspection to those hours during which his or her office is open to the public, an agency policy that restricts inspection of public records to the hours of 8:30 a.m. to 9:30 a.m., Monday through Friday with 24-hour advance notice violates the Public Records Act. Lake Shore Hospital Authority v. Lilker, 168 So. 3d 332 (Fla. 1st DCA 2015). Accord AGO 81-12 (custodian not authorized to establish an arbitrary time period during which records may or may not be inspected).

Let me be clear you are already in violation of the law. Any further violation cannot be said to be an unknowing violation.

119.10 Violation of chapter; penalties.—

(1) Any public officer who:

(a) Violates any provision of this chapter commits a noncriminal infraction, punishable by fine not exceeding \$500.

(b) Knowingly violates the provisions of s. 119.07(1) is subject to suspension and removal or impeachment and, in addition, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who willfully and knowingly violates:

(a) Any of the provisions of this chapter commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Again please let me know when I can inspect these records.

Regards,

Dr. James Eric McDonough

ps. As a new request please send me what ever records you possess that you used to draft your email, as I know it was not you. As always I want electronic records electronically.

On Tue, Sep 24, 2019, 4:54 PM Liz Palau <LPalau@cityofhomestead.com> wrote:

Good afternoon Dr. McDonough,

The City is not refusing to provide the opportunity to inspect electronic records in person. As you know, the particular records you seek are not just immediately available for you to view on any computer. Instead, IT must perform a search (or searches) of the City's servers to identify the records that may be responsive to your request. The City has advised you that if the time necessary to identify, manage and compile the information is extensive, you will be required to pay an advance deposit (which the City is in the process of preparing) prior to the City undertaking to perform the work.

Upon your payment of the deposit, the City will begin to compile the electronic records for your review at City Hall. However, this does not mean that you will be provided, as you appear to be requesting, unfettered access to the City's computers and/or server. There is nothing in the Public Records Law mandating that you may wholly dictate the manner in which the records are accessed or copied, such that the protection of confidential, exempt, and/or private (non-public records) material is compromised. Instead, the City's duty to allow inspection or copying of public records must be in a manner that will accommodate the requestor, but at the same time safeguard the records. Accordingly, the City is not required to allow you direct access to the City's computers. See Fla. AGO 2013-07, 2013 WL 1384296 (Fla. A.G. 2013) (providing the opinion that a municipality "is not required to allow the requestor of public records to directly access the [municipality]'s computer records ... but must otherwise allow

inspection and copying of such records in a manner which will accommodate the request, but protect from disclosure exempt or confidential materials.”).

Finally, please note that the phone records you have requested may include private cell phone numbers of active law enforcement officers. As such, those records will need to be reviewed and redacted prior to production. See Section 119.071(4)(d)2.a., Florida Statutes (“The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel ... are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.”).

Thank you

 City-Logo with tractor (2)

Liz Palau

Administrative Assistant/ Deputy City Clerk

Office: 305-224-4445

Fax: 305-224-4459

lpalau@cityofhomestead.com

Please consider the environment before printing this e-mail.

From: Eric McDonough [mailto:phd2b05@gmail.com]

Sent: Monday, September 23, 2019 7:09 PM

To: Liz Palau <LPalau@cityofhomestead.com>

Cc: Elizabeth Sewell <ESewell@cityofhomestead.com>; Monica Herrera <MHerrera@cityofhomestead.com>; Julissa Chavez <JChavez@cityofhomestead.com>; Stephen Shelley <SShelley@cityofhomestead.com>; Elvis Maldonado <EMaldonado@cityofhomestead.com>; Julio Guzman <JGuzman@cityofhomestead.com>; Larry Roth <LRoth@cityofhomestead.com>; Jon Burgess <JBurgess@cityofhomestead.com>; Jenifer Bailey <JBailey@cityofhomestead.com>; Patricia Fairclough <PFairclough@cityofhomestead.com>

Subject: Re: PRR James Eric McDonough - City Clerk Responsive Email (9-23-2019)

Stop playing semantics.

The law requires you to provide the right to 1) inspect and 2) copy. Not one or the other with your choice of method.

These are two separate requirements. I am demanding my right to inspect, which again is separate from my right to have you give me copies.

Again, so we are clear here, you are refusing me right to inspect the electronic records in person, is that correct?

Dr. James Eric McDonough

On Mon, Sep 23, 2019 at 5:12 PM Liz Palau <LPalau@cityofhomestead.com> wrote:

Good afternoon Dr. McDonough,

You are not being denied access to electronic records. As explained below, your request may require extensive use of information technology resources, or extensive clerical or supervisory assistance by personnel of the City to identify, manage and compile the requested information. The City is in the process of estimating the time necessary to search, manage and compile the information. The City has advised you that it is in the process of estimating the costs associated with that work and that you will be required to pay an advance deposit. Once you have paid that deposit, the City will begin to process your request and will make the records available to you electronically.

Thank you

 City-Logo with tractor (2)

Liz Palau

Administrative Assistant/ Deputy City Clerk

Office: 305-224-4445

Fax: 305-224-4459

lpalau@cityofhomestead.com

Please consider the environment before printing this e-mail.

From: Eric McDonough [mailto:phd2b05@gmail.com]

Sent: Monday, September 23, 2019 2:38 PM

To: Julissa Chavez <JChavez@cityofhomestead.com>; Stephen Shelley <SShelley@cityofhomestead.com>; Elvis Maldonado <EMaldonado@cityofhomestead.com>; Julio Guzman <JGuzman@cityofhomestead.com>; Larry Roth <LRoth@cityofhomestead.com>; Jon Burgess <JBurgess@cityofhomestead.com>; Jenifer Bailey <JBailey@cityofhomestead.com>; Patricia Fairclough <PFairclough@cityofhomestead.com>

Cc: Elizabeth Sewell <ESewell@cityofhomestead.com>; Liz Palau <LPalau@cityofhomestead.com>; Monica Herrera <MHerrera@cityofhomestead.com>

Subject: Re: PRR James Eric McDonough - City Clerk Responsive Email (9-23-2019)

So just to be absolutely clear on the record, you are not offering the right to electronically inspect records electronically as required by FS. 119.01(2)(a), is that correct?

The communications between SDNL and HDP are not privileged and can be pulled up on any computer connected to the mainframe at anytime.

I am willing to pay an advanced deposit for a supervisor while I inspect these electronic records in person>

You are likely already in violation of the law in not providing me with an opportunity to inspect the records yet.

If I am not allowed to inspect by COB tomorrow I will be filing suit.

Sincerely,

Dr. James Eric McDonough

On Mon, Sep 23, 2019 at 11:01 AM Julissa Chavez <JChavez@cityofhomestead.com> wrote:

Good morning Mr. McDonough,

The City is in receipt of your below request for "all communications between the South Dade News Leader and Homestead Police Department. This includes all emails and phone records. This is for the period from 1/1/2019 to present."

Your request documents and information may be extensive, and may require extensive use of information technology resources, or extensive clerical or supervisory assistance by personnel of the City to identify, manage and compile the requested information. It is the policy of the City to impose a duplication charge for copying public records and additional charges in accordance with the fee schedule enumerated in Section 119.07(4), Florida Statutes. It is the City's policy that a deposit be submitted by the requesting party in an amount equal to the anticipated cost of the assembly and duplication before processing will commence, particularly where clerical services of an extensive nature are necessary. We are in the process of estimating these costs and will provide you with an estimate as soon as possible.

Should you have any questions, please do not hesitate to contact me.

Kind Regards,

 City-Logo with tractor (2)

Julissa Chavez

Deputy Clerk

Office of the City Clerk

100 Civic Court Homestead, FL 33030


Office: 305-224-4440 & Fax: 305-224-4459

From: Julissa Chavez
Sent: Friday, September 20, 2019 6:37 PM
To: 'phd2b05@gmail.com' <phd2b05@gmail.com>
Cc: Elizabeth Sewell <ESewell@cityofhomestead.com>; Liz Palau <LPalau@cityofhomestead.com>; Monica Herrera <MHerrera@cityofhomestead.com>
Subject: PRR James Eric McDonough - Communication with South Dade News Leader

Greetings from the Clerk's Office,

Your request has been received in the City Clerk's Office on **09/20/2019** and forwarded to the appropriate department(s) for processing. As soon as we receive a response from them, we will contact you. I have attached a copy that was stamped as received for your records.

Respectfully,

 City-Logo with tractor (2)

Julissa Chavez

305 224-4440

Office of the City Clerk

From: Elizabeth Sewell
Sent: Friday, September 20, 2019 6:24 PM
To: Julissa Chavez
Subject: PRR James Eric McDonough - Communication with South Dade News Leader

Good evening Julie,

Please process this public record request.

Thank you.

From: Eric McDonough [mailto:phd2b05@gmail.com]
Sent: Friday, September 20, 2019 5:59 PM
To: Elizabeth Sewell <ESewell@cityofhomestead.com>
Cc: Jon Burgess <JBurgess@cityofhomestead.com>; Jenifer Bailey <JBailey@cityofhomestead.com>;

Stephen Shelley <SShelley@cityofhomestead.com>; Julio Guzman <JGuzman@cityofhomestead.com>;
Larry Roth <LRoth@cityofhomestead.com>; Elvis Maldonado <EMaldonado@cityofhomestead.com>;
Patricia Fairclough <PFairclough@cityofhomestead.com>; George Gretsas
<GGretsas@cityofhomestead.com>; Al Rolle <arolle@homesteadpolice.com>
Subject: Records Request for Communication with South Dade News Leader

Hello Elizabeth,

This is a formal requests under FS. 119.

I am requesting all communications between the South Dade News Leader and Homestead Police Department.
This includes all emails and phone records. This is for the period from 1/1/2019 to present.

I would like both: 1) electronic copies of records ASAP; and 2) to personally inspect these electronic records
immediately and electronically.

Please let me know what time I can come in on Monday or Tuesday for inspect these electronic records
electronically.

I will remind you that FS. 119.01(2)(a) requires that you allow me to inspect electronic records.

If you cannot allow me access to inspect by Tuesday, I will be filing another lawsuit, and will name you as the sole
defendant this time as it is you who has not allowed me to inspect records repeatedly in the past.

Regards,

Dr. James Eric McDonough

3 attachments



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